



California Fair Political Practices Commission

October 15, 1990

Peter A. Bagatelos
Bagatelos & Fadem
601 California St., Ste. 1801
San Francisco, CA 94108

Re: Your Request for
Informal Assistance
Our File No. I-88-383

Dear Mr. Bagatelos:

You have requested advice concerning the campaign provisions of the Political Reform Act.^{1/} Because you have not identified the person on whose behalf you are seeking advice, we consider your request to be one for informal assistance.^{2/}

QUESTIONS

You have asked several questions concerning the Act's disclosure and mass mailing identification requirements in the following situation: An association wishes to make expenditures to assist a committee primarily formed to support or oppose a ballot measure. The association or its sponsored committee will purchase political materials, including envelope stuffers, from the ballot measure committee and will sell the materials to members of the association. The members will hand out the materials at their places of business and will mail the envelope stuffers to their customers, either in the members' routine monthly mailings or in special political mailings. In some cases, a commercial mailing house may be used.

1. Is the association/sponsored committee making a contribution to the ballot measure committee when it purchases the materials? Is the association/sponsored committee receiving contributions when it sells the materials to its members?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

2. Are the association members making contributions to the ballot measure committee when the materials are purchased and mailed to the members' customers?

3. If the answer to Question 2 is yes and the political materials are included in the members' routine mailings along with non-political materials, what is the value of the contribution to the ballot measure committee?

4. What identification is required on the mailings sent by the association members?

CONCLUSIONS

1. The association/sponsored committee is not making a contribution when it purchases the materials from the ballot measure committee, and is not receiving contributions from association members who purchase the materials.

2. You have indicated that there is consultation and cooperation between the association/sponsored committee and the ballot measure committee, and that the association/sponsored committee is coordinating its activities with the members. Therefore, payments made by the association members in connection with purchasing and mailing the materials are contributions to the ballot measure committee.

3. When political materials are included in a mailing along with non-political materials, the value of the contribution to the ballot measure committee would include amounts paid by the association members to purchase the materials, as well as costs incurred by the members to distribute the materials, including reproduction costs, envelopes, postage, and salaries paid to employees who spend 10 percent or more of their compensated time in any calendar month in connection with distributing the materials. With regard to costs for postage and envelopes, the value may be allocated between the political and the non-political pieces.

4. Because payments for the mailings are non-monetary contributions to the ballot measure committee, the ballot measure committee is deemed to be the sender and must be identified on the outside of any special political mailing which consists of over 200 substantially similar pieces of mail sent in a calendar month. If the political materials are included in a member's routine mailing to its customers, the member's name and address may appear on the outside of the mailing. The ballot measure committee's name and address must appear on the political materials.

ANALYSIS

Section 82015 of the Act defines the term "contribution" as:

...a payment...except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure....

The term "contribution" further includes any transfer of anything of value by a committee from another committee, unless full and adequate consideration is received....

(Emphasis added.)

By regulation, the term "made at the behest" has been defined as a payment made "under the control or at the direction of, in cooperation, consultation, coordination, or concert with, or at the request or suggestion of a candidate, controlled committee, official committee of a political party, or organization formed or existing primarily for political purposes." (Regulation 18215.)

To the extent that the association/sponsored committee receives full and adequate consideration in the form of the political materials purchased from the ballot measure committee, the association/sponsored committee is not making a contribution to the ballot measure committee. Likewise, association members are not making contributions to the association/sponsored committee when purchasing the materials. Therefore, both committees would disclose the receipts on Schedule G (Miscellaneous Increases to Cash) of their campaign disclosure statements (Form 420).

However, the association members are not receiving full and adequate consideration for their payments to purchase and distribute the materials. In addition, you have indicated that there is consultation and cooperation between the association members and the ballot measure committee. Therefore, the association members' payments are contributions to the ballot measure committee.

For purposes of determining the value of the contributions from the members, Section 85205.5 requires disclosure of the "fair market value." The fair market value is whatever it would cost the committee to distribute the materials. However, when political materials are included in a routine mailing along with non-political items, the Commission has stated that postage and envelope costs may be valued in the same manner that they would be

valued if the expenditures to distribute the materials were "independent expenditures" as defined in Section 82031 rather than "contributions" (i.e., they may be allocated between the political and the non-political materials). (In re Cannon, 2 FPPC Opinions 133, 1976.)

In the present case, where both political and nonpolitical materials will be included in the mailing, each member association must allocate a reasonable portion of the postage and envelope costs to the political communication for the purpose of determining the amount of the expenditure involved. Other than the requirement that any such allocation be reasonable and be made in good faith, there are no precise rules for determining exactly how the allocation should be accomplished. Generally, however, it will be acceptable to allocate on the basis of the comparative number of items or pages, or the comparative amount of weight, between the political and the nonpolitical materials.

Cannon, supra, at 136.

...Finally, with respect to postage and envelope costs, these will be in-kind contributions to CFR, and the amount of such contributions will be equal to the amount of the postage costs which is an expenditure. In conclusion, therefore, a member association's in-kind contribution to CFR will be identical to its expenditures in connection with distributing the inserts and displaying the counter signs.

Cannon, supra, at 138-139.

With regard to identification requirements, Section 84305 requires that any "mass mailing" (over 200 pieces of mail sent in a calendar month) sent by a candidate or committee must contain, on the outside of the mailing, the name and address of the sender in no less than 6-point type. I have been unable to locate any written opinions or advice on the subject of mass mailings which are sent by a third party at the behest of a candidate or committee. However, as I advised you during our telephone conversation, the staff has advised that when a mass mailing is sent at the behest of a candidate or committee, the candidate or committee at whose behest the mailing is sent must be identified as the sender. Enclosed is page 28 of the 1986 "Information Manual on Campaign Disclosure Provisions of the Political Reform Act," which states:

The "sender" of a mass mailing is the candidate or committee who pays for or incurs the largest portion of expenses attributable to designing, printing or posting of the mailing. However, if a person pays for the cost of a mailing

at the behest of a candidate or committee, the candidate or committee at whose behest such a payment is made must be identified as the sender.

Emphasis added.

This statement has been included in the campaign information manual since 1986.

However, with regard to inclusion of political materials along with non-political materials in an entity's routine mailings, staff has advised that the mass mailing identification need only appear on the political materials and need not be included on the outside of the mailing. For example, when a political flyer is included in a regular mailing from an organization to its members or employees, it would not be practical or reasonable to require the candidate's or committee's name and address to be printed on the outside of the mailing. Therefore, staff has advised in these situations that the identification should be printed on the political materials only.

I apologize for the delay in responding to your request. If you have questions concerning this letter, please call me at (916) 322-5662.

Sincerely,

Scott Hallabrin
Acting General Counsel

Carla Wardlow

By: Carla Wardlow
Assistant Division Chief
Technical Assistance &
Analysis Division

Enclosure

STATE OF CALIFORNIA

INFORMATION MANUAL ON CAMPAIGN DISCLOSURE PROVISIONS OF THE POLITICAL REFORM ACT

1986

Prepared by the

FAIR POLITICAL PRACTICES COMMISSION
428 J STREET

Sacramento, CA 95814 916/322-5662
107 So. Broadway, Room 7007, Los Angeles, CA 90012 213/620-5196

N. MASS MAILING

A mass mailing is 200 or more identical or nearly identical pieces of mail sent in any calendar month.

The "sender" of a mass mailing is the candidate or committee who pays for or incurs the largest portion of expenses attributable to designing, printing or posting of the mailing. However, if a person pays for the cost of a mailing at the behest of a candidate or committee, the candidate or committee at whose behest such a payment is made must be identified as the sender.

The sender of a mass mailing must be identified by name, address and city in at least 6-point type on the outside of the mailing and on at least one insert. However, if the sender is a single candidate or committee, the identification need only be shown on the outside of each piece of mail. If the sender is a controlled committee, the name of the person controlling the committee must be included. A Recipient Committee may use a post office box if its street address is a matter of record with the Secretary of State. It is not necessary to include a recipient committee's I.D. number or the name of a committee treasurer or printer on the mailing. (Note: The Political Reform Act does not contain provisions concerning the *content* of mass mailings.)

O. CAMPAIGN PRINTED MATTER OTHER THAN A MASS MAILING

For information concerning identification requirements for certain campaign related printed material other than a mass mailing, contact your city attorney, district attorney or the Attorney General's Office. (Note: The Political Reform Act does not contain provisions concerning the identification or content of newspaper, television, radio or other campaign related advertisements or materials.)

P. COMPUTERIZED CAMPAIGN STATEMENTS

Government Code Section 82006 requires that campaign statements filed pursuant to the Political Reform Act be prepared on forms prescribed by the Fair Political Practices Commission. The Commission will permit the use of computer-generated campaign statements as long as the format provides all of the required information in a form substantially similar to the Commission's forms. Computerized formats *must* be sent to the Commission for approval prior to use.

For information concerning the use of computer-generated campaign statements, contact Helen Arriola in the Commission's Los Angeles office at 107 S. Broadway, Suite 7007, 90012.

88-382

LAW OFFICES OF
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October 3, 1988

Ms. Carla Wardlow
Technical Assistance Division
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Dear Carla:

This will confirm our telephone conversation on September 30, 1988. I contacted you to ask you for the FPPC staff views regarding reporting and identification requirements under certain circumstances.

I described to you circumstances under which an association or an association PAC, after consultation with a separate ballot measure committee, would purchase political materials, including envelope stuffers, and then sell these materials at cost to the association members. The association members then would insert these stuffers in their general monthly mail envelopes to customers and otherwise hand out materials to customers at their places of business. Alternatively, the association members may decide to use commercial mailing houses to send out their mailings, which could either be routine monthly mailings, including the stuffer, or special mailings just for political purposes. Based on these circumstances, I asked you for the staff view regarding the reporting and identification requirements under the California Political Reform Act (PRA).

You advised me that where the association purchases the materials and then sells them, at cost, to the association members, there would be no reportable transaction by the association since there is consideration paid for the materials. Under such circumstances, there is no contribution, as defined by Government Code Section 82015. If the association PAC were to purchase the materials, and then receive reimbursement at cost from the members, then the PAC would disclose the expenditures on Schedule E and the reimbursement on Schedule G as miscellaneous receipts.

You further advised me that since there is cooperation and consultation between the ballot measure committee and the association and its PAC, who in turn are coordinating with their members, there would be no independent expenditures being made by any of the parties, however, the association members would

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make non-monetary contributions to the ballot measure committee of the amounts paid to acquire the materials, as well as any additional costs incurred in connection with distributing the various materials, such as reproduction costs, postage, salaries, and other payments made to personnel who spend more than 10% of their compensated time, and other similar expenses.

We discussed what value to place on a mailing which contains both political and non-political materials. I indicated that we had relied over past years on the Cannon opinion (2 FPPC Opinions 133), which specifies that the cost of the mailing may be allocated between the political and the non-political pieces. The allocation may be based on weight, and/or number of pieces of paper within the mailing. For example, if there are four pieces of paper in the mailing, of which one is a political insert, then 25% of the cost of the postage, envelopes, and other applicable costs could be allocated as the cost of the mailing for reporting purposes. You indicated, however, that according to FPPC Acting General Counsel Kathy Donovan, Esq., the above Cannon opinion is not as clear as it sounds. Kathy Donovan advised that the PRA requires the fair market value of items to be disclosed, and that the Cannon opinion does not address what is the fair market value under such circumstances. You indicated that the cost of the mailing could be substantially more than just the envelopes and postage. I found this conclusion to be confusing and asked you to request Kathy Donovan to contact me so that we may discuss this further. In light of the apparent clear meaning of the Cannon opinion, it would be most helpful to have further clarification of Kathy Donovan's interpretation.

We then discussed the identification required for mass mailings of the political materials described above. We discussed Government Code Section 84305, and Regulation Section 18435, which generally specifies that the sender of a mass mailing is the candidate or committee who pays for the largest portion of expenditures attributable to the mailing. In the context of the circumstances I described above, it was my feeling that an association member who pays for its respective mailing would, if it is a major donor committee, be identified as the sender on its mass mailing. Otherwise, if an association member is not a major donor committee, then there would be no requirement that each mailing of 200 or more pieces be identified as to the sender in any way. However, you related what you described to me as long standing staff advice that where a sender, whether a major donor committee or not, makes an in-kind contribution to a committee for purposes of sending out a mass mailing, then the committee receiving the non-monetary contribution is considered to be the sender and must be

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identified on the outside of each piece of mail and on at least one of the inserts. If the in-kind contributor is also a major donor committee, then the major donor would also have to be so identified. I asked you on what authority this interpretation was based, and you referred to amendments to Regulation Section 18435 which were adopted by the FPPC at its meeting on September 10, 1985. You referred me to FPPC Bulletin, dated October 1, 1985, which summarized the adopted amendments. You cited these adopted amendments as the authority for the staff advice. After checking regarding these amendments, I determined that those amendments were repealed by the FPPC at its meeting on November 5, 1985. Therefore, I was further confused by the use of those rescinded regulation amendments as the authority for the staff advice. You subsequently conferred with the legal staff and advised me that, in spite of the fact that the regulation amendments were rescinded, the interpretation and advice based on the rescinded regulations continues to be the advice of the FPPC staff.

You then clarified, however, that the staff advice would apply to a special political mailing made by an in-kind contributor, in consultation with another committee, to political materials only. In such cases, the committee on whose behalf the mailing is being sent would be identified as the sender, along with the in-kind contributor, if a contributor is a major donor committee also. Under circumstances where a routine mailing for non-political purposes is being sent, and a political insert is included, you indicated that the staff advice is that the committee on whose behalf the political insert is sent would not be construed as the sender of the mailing. You indicated that there was no particular written authority other than FPPC staff interpretation and ongoing advice. Again, this area is somewhat confusing and it would be very helpful to receive written clarification as to the legal basis for this interpretation by staff.

Lastly, under the rules and interpretation of staff referenced above, you indicated that where an association member utilizes a commercial mailing house for sending a mailing, the committee on whose behalf the political materials are being sent would be the sender if a special political mailing were made, but would not be the sender if the insert were included in a regular non-political mailing to customers. The cost of the mailing would still be construed as a non-monetary contribution to the ballot measure committee, which would have to report it on Schedule C. The value, of course, would be open to discussion based on the need to clarify the language of the Cannon opinion, as mentioned above.

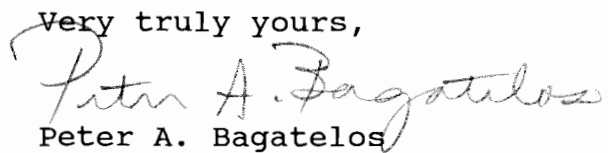
As I told you in our telephone conversation, my client was in need of prompt guidance because of election deadlines. We appreciated your timely response to the questions that I posed.

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I have communicated your responses to my client, and they have proceeded, at least initially, consistent with the information that you provided regarding who is the sender of political materials. We would still like to clarify the exact value that needs to be reported of mailings that include political and non-political materials. Your written confirmation of my summary of our discussion included herein would be appreciated.

As always, thank you for your cooperation, patience, and guidance.

Very truly yours,

A handwritten signature in cursive script that reads "Peter A. Bagatelos". The signature is written in dark ink and is positioned above the printed name.

Peter A. Bagatelos

PAB/yjw



California Fair Political Practices Commission

October 11, 1988

Peter A. Bagatelos
Bagatelos & Fadem
The International Building
601 California Street, Suite 1801
San Francisco, CA 94108

Re: 88-383

Dear Mr. Bagatelos:

Your letter requesting advice under the Political Reform Act was received on October 6, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Jeanne Pritchard
Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh